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HOUSE BILL 512

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CHILD CARE; ENACTING A NEW SECTION OF CHAPTER 50  
NMSA 1978 TO PROVIDE FOR COLLECTIVE BARGAINING AND  
REPRESENTATION OF CHILD CARE PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50 NMSA 1978 is  
enacted to read:

"~~[NEW MATERIAL]~~ FAMILY CHILD CARE PROVIDER COLLECTIVE  
BARGAINING--REPRESENTATION.--

A. The purpose of this section is to authorize  
family child care providers to organize and bargain  
collectively on all matters specified in this section. It is  
the intent of the legislature that the state action exemption  
to the application of federal and state antitrust laws be fully  
available to the extent that the activities of the family child

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1 care providers and their representatives are authorized under  
2 this section.

3 B. Family child care providers shall have the right  
4 to form, join or assist a labor organization for the purpose of  
5 collective bargaining through representatives chosen by family  
6 child care providers without interference, restraint or  
7 coercion and shall have the right to refuse any such  
8 activities.

9 C. The exclusive representative may be selected by  
10 mail ballot election conducted by a reputable organization with  
11 experience in conducting representation elections. In order  
12 for an election to occur, a representative or representative  
13 organization shall have collected signed cards from at least  
14 thirty percent of affected family child care providers  
15 indicating their desire for representation. The organization  
16 conducting the election shall establish procedures to ensure  
17 the secrecy of any ballot cast in any election held pursuant to  
18 this section. Costs of the election shall be borne by the  
19 labor organization seeking exclusive representative status.  
20 The providers in the unit shall be offered the opportunity to  
21 choose between the following:

22 (1) representation by the provider  
23 organization; or

24 (2) no representation.

25 D. A labor organization that has been certified

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1 through the process as representing the family child care  
2 providers shall be the exclusive representative for all family  
3 child care providers for the purposes of negotiating a  
4 collective bargaining agreement with the children, youth and  
5 families department.

6 E. The children, youth and families department  
7 shall meet with the family child care providers and their  
8 exclusive representative with the purpose of entering into a  
9 written agreement that shall be binding upon both the state and  
10 the exclusive representative. The written agreement shall  
11 include a binding arbitration procedure, grievance process, the  
12 creation of a labor-management committee that will meet  
13 regularly to discuss concerns and issues as they arise and  
14 mechanisms for dues collection.

15 F. Topics of negotiations will include terms and  
16 conditions under which family child care providers provide  
17 child care in their homes and in the homes of parents,  
18 including reimbursement rates and payment procedures for  
19 publicly funded care, health and safety conditions, the  
20 monitoring and evaluating of family child care homes, licensing  
21 and other fees, quality rating standards, training and  
22 certification requirements and any other matters that would  
23 improve recruitment and retention of qualified family child  
24 care providers and the quality of the programs they provide.  
25 The labor organization and the state agency shall work together

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1 to explore systems for family child care providers to access  
2 affordable, comprehensive health insurance coverage.

3 G. An agreement provision by the state and the  
4 exclusive representative that requires the expenditure of funds  
5 shall be contingent upon the specific appropriation of funds by  
6 the legislature and the availability of funds.

7 H. In order to ensure that the children, youth and  
8 families department's mandate for quality measures continues  
9 for all licensed providers of child care services, the  
10 department shall ensure the adequate allocation of appropriated  
11 funds to those providing the highest-quality care, including  
12 licensed centers and licensed family child care providers.

13 I. Should the parties be unable to reach an  
14 agreement, the parties shall follow the impasse resolution  
15 procedure as outlined in the Public Employee Bargaining Act.

16 J. The children, youth and families department  
17 shall not:

18 (1) discriminate or knowingly allow any other  
19 organizations with which the children, youth and families  
20 department contracts to administer services related to child  
21 care to discriminate against a family child care provider with  
22 regard to the terms and conditions of its relationship with the  
23 provider because of the provider's membership in a labor  
24 organization;

25 (2) take negative action against a family

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1 child care provider or knowingly allow any other organizations  
2 with which the children, youth and families department  
3 contracts to administer services related to child care to take  
4 negative action because the provider has signed or filed an  
5 affidavit, petition, grievance or complaint or given  
6 information or testimony or because the provider is forming,  
7 joining or choosing to be represented by a labor organization;

8 (3) refuse to bargain collectively in good  
9 faith with the labor organization; or

10 (4) refuse to comply with a collective  
11 bargaining agreement reached with the labor organization  
12 pursuant to this section.

13 K. The labor organization shall not:

14 (1) discriminate against a family child care  
15 provider with regard to labor organization membership because  
16 of race, color, religion, creed, age, sex or national origin;

17 (2) refuse to bargain collectively in good  
18 faith with the children, youth and families department; or

19 (3) refuse to comply with a collective  
20 bargaining agreement reached with the children, youth and  
21 families department pursuant to this section.

22 L. By entering into an agreement, the children,  
23 youth and families department does not intend to interfere with  
24 parental rights to select or deselect family child care  
25 providers and will not interfere with rates of payment paid

1 through parents' private money to family child care providers.

2 M. In enacting bargaining rights for family child  
3 care providers, the state intends to provide state action  
4 immunity under federal and state antitrust laws for the  
5 activities of family child care providers and their exclusive  
6 bargaining representative to the extent such activities are  
7 authorized by this section.

8 N. As used in this section:

9 (1) "exclusive representative" means a labor  
10 organization that, as a result of certification, has the right  
11 to represent family child care providers in an appropriate  
12 bargaining unit for the purposes of collective bargaining;

13 (2) "family child care provider" means a  
14 person who provides care services and supervision for children  
15 in the provider's own home under regulations established by the  
16 children, youth and families department and who is:

17 (a) licensed by the state; or

18 (b) registered with the state to  
19 participate in the child and adult care food program and is a  
20 vendor in the state and federal child care assistance program;  
21 and

22 (3) "labor organization" means an employee  
23 organization whose purposes include the representation of  
24 family child care providers in collective bargaining and in  
25 otherwise meeting, consulting and conferring with the children,

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1 youth and families department on matters pertaining to  
2 employment relations.

3 0. If any part or application of this section is  
4 held invalid, the remainder or its application to other  
5 situations or persons shall not be affected."

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